

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Robert G. Taub, Chairman;
Mark Acton, Vice Chairman;
Tony Hammond; and
Nanci E. Langley

Competitive Product Prices
Global Expedited Package Services (GEPS) Contracts
GEPS 8

Docket No. MC2017-183

Competitive Product Prices
GEPS 8 (MC2016-196)
Negotiated Service Agreements

Docket No. CP2017-284

ORDER ADDING GEPS 8 TO THE COMPETITIVE PRODUCT LIST
AND DESIGNATING BASELINE AGREEMENT

(Issued September 27, 2017)

I. INTRODUCTION

The Postal Service seeks to add Global Expedited Package Services 8 (GEPS 8) to the competitive product list.¹ For the reasons discussed below, the Commission approves the Request.

¹ Request of the United States Postal Service to Add Global Expedited Package Services 8 Contracts to the Competitive Products List, and Notice of Filing (Under Seal) of Contract and Application for Non-Public Treatment of Materials Filed Under Seal, September 5, 2017 (Request).

II. BACKGROUND

Contracts under the GEPS products offer price incentives to mailers that use Priority Mail Express International (PMEI), Priority Mail International (PMI), Commercial ePacket (CeP), and/or First-Class Package International Service (FCPIS). The Commission added GEPS 1, GEPS 2, GEPS 3, GEPS 4, GEPS 5, GEPS 6, and GEPS 7 to the competitive product list in Order Nos. 86, 290, 503, 657, 2844, 3365, and 3542 respectively.²

On September 5, 2017, the Postal Service filed the Request, supporting documents, and the negotiated service agreement (Agreement) it seeks to have designated as the baseline agreement for the GEPS 8 product. The supporting documents include:

- A statement of supporting justification for adding GEPS 8 to the competitive product list
- A copy of the Agreement
- A copy of Governors' Decision No. 11-6
- Proposed revisions to the Mail Classification Schedule (MCS)
- A certification of compliance with 39 U.S.C. § 3633(a)
- Financial workpapers

² See *respectively*, Docket No. CP2008-5, Order Concerning Global Expedited Package Services Contracts, June 27, 2008 (Order No. 86); Docket No. CP2009-50, Order Granting Clarification and Adding Global Expedited Package Services 2 to the Competitive Product List, August 28, 2009 (Order No. 290); Docket Nos. MC2010-28 and CP2010-71, Order Approving Global Expedited Package Services 3 Negotiated Service Agreement, July 29, 2010 (Order No. 503); Docket No. CP2011-54, Order Approving Global Expedited Package Services 4 Negotiated Service Agreement, January 24, 2011 (Order No. 657); Docket Nos. MC2016-15 and CP2016-20, Order Adding Global Expedited Package Services 5 Contracts to the Competitive Product List and Approval of Designation as Baseline Agreement, November 25, 2015 (Order No. 2844); Docket Nos. MC2016-149 and CP2016-188, Order Adding Global Expedited Package Services 6 Contracts to the Competitive Product List and Approval of Designation as Baseline Agreement, June 14, 2016 (Order No. 3365); Docket Nos. MC2016-196 and CP2016-280, Order Adding Global Expedited Package Services 7 to the Competitive Product List and Designating Baseline Agreement, September 27, 2016 (Order No. 3542).

Request at 2-3. See *a/so*, Request, Attachments 1-5. Also, the Postal Service submitted an application for non-public treatment of materials requesting that unredacted portions of the Agreement, customer-identifying information, and related financial information remain under seal. Request, Attachment 6.

In its Request, the Postal Service states that the Agreement is similar to contracts included under the GEPS 5 product. Request at 3. However, it notes that the GEPS 8 contracts include an additional price table for PMEI parcels.³

The Postal Service will notify the customer of the effective date of the Agreement. Request at 4. If the effective date of the Agreement is the first of the month, the Agreement will expire one year after the effective date. *Id.* Otherwise the agreement will expire on the last day of the month one year after the effective date. *Id.* at 5.

On September 6, 2017, the Commission provided public notice of the Request, established the instant dockets, appointed a Public Representative, and invited comments on whether the Postal service's filings are consistent with applicable statutory and regulatory requirements.⁴

On September 21, 2017, the Commission issued Chairman's Information Request No. 1.⁵ CHIR No. 1 asked the Postal Service to confirm that an additional proposed change to the MCS language accurately describes CeP Service as FCPIS with delivery tracking. CHIR No. 1 at 1. The Postal Service responded on September 26, 2017.⁶ In the Response to CHIR No. 1, the Postal Service confirmed that the

³ *Id.* at 3-4. Other differences include a minor change to the payment method in Article 2, the inclusion of additional preparation requirements, the deletion of an article concerning audit rights, the addition of Articles 34 and 35 concerning Sovereign Acts and Priority Mail Express International (PMEI), and revising existing articles. See Request, Attachment 4.

⁴ Notice Initiating Docket(s) for Recent Postal Service Negotiated Service Agreement Filings, September 6, 2017.

⁵ Chairman's Information Request No. 1, September 21, 2017 (CHIR No. 1).

⁶ Response of the United States Postal Service to Chairman's Information Request No. 1, September 26, 2017 (Response to CHIR No. 1).

Commission's proposed language accurately described CeP Service, but proposed alternative language to make clear that delivery tracking is also available in the GEPS baseline agreements that offer FCPIS. Response to CHIR No. 1 at 1-2.

III. COMMENTS

The Public Representative filed comments on September 13, 2017.⁷ No other interested person submitted comments. The Public Representative states that the contract appears able to generate sufficient revenue to cover its attributable costs. PR Comments at 2.

IV. COMMISSION ANALYSIS

The Commission has reviewed the Request, the Agreement, supporting documents, financial analyses provided under seal, and the Public Representative's comments. In its analysis, the Commission must add GEPS 8 to either the market dominant or competitive product list under 39 U.S.C. § 3642. If it finds GEPS 8 to be a competitive product, it must ensure that the Agreement complies with 39 U.S.C. § 3633(a) and designate the Agreement as the baseline agreement for the GEPS 8 product.

Product classification. The Commission must classify the GEPS 8 product and add it to either the market dominant or competitive product list. See 39 U.S.C. § 3642(b)(1); 39 C.F.R. § 3020.34(a). Before adding a product to the competitive product list, the Commission must consider three criteria. First, the Commission must find that the Postal Service does not "exercise[] sufficient market power that it can effectively set the price of such product substantially above costs, raise prices significantly, decrease quality, or decrease output, without risk of losing a significant

⁷ Public Representative Comments on Request of United States Postal Service Filing a Functionally Equivalent Global Expedited Package Services 8 Negotiated Service Agreement, September 13, 2017 (PR Comments).

level of business to other firms offering similar products.” 39 U.S.C. § 3642(b)(1); see 39 C.F.R. § 3032.32(d). Second, the Commission must ensure that the product is not covered by the postal monopoly. 39 U.S.C. § 3642(b)(2); 39 C.F.R. § 3020.32(e). Third, the Commission must consider the availability and nature of private sector enterprises engaged in delivering the product, the views of those who use the product, and the likely impact on small business concerns. See 39 U.S.C. § 3642(b)(3); 39 C.F.R. §§ 3020.32(f)-(h).

The Postal Service asserts that it does not maintain a position of dominance in the market for international shipping. See Request, Attachment 1 at 2. It notes that PMEI, PMI, FCPIS, and CeP have all been classified as competitive because they are excluded from the postal monopoly and are competitive in their respective markets. *Id.* at 3. It contends that small businesses will benefit because GEPS 8 contracts will provide pricing incentives that reduce costs. *Id.* at 4.

The Commission finds that the Postal Service does not exercise sufficient market power that it can effectively set the price of the proposed product substantially above costs, raise prices significantly, decrease quality, or decrease output, without the risk of losing a significant level of business to other firms offering similar products. This finding is supported by the fact that the GEPS 8 product is similar to the GEPS 5 competitive product (as a derivative of that product with the addition of PMEI, another competitive product). All of the GEPS 8 product components are current competitive products.⁸ Therefore the Commission concludes that the GEPS 8, with regard to market power, is appropriately a competitive product.

Regarding the other requirements of 39 U.S.C. § 3642(b), GEPS 8 consists exclusively of competitive products not covered by the postal monopoly. Additionally, the Postal Service competes with other businesses in the market for international shipping services, customers such as the contract partner will likely be interested in the

⁸ CeP is a variant of FCPIS, which is a competitive product. See n.9, *infra*.

GEPS 8 product, and there is no evidence of an adverse impact on small businesses.

For these reasons, having considered the relevant statutory and regulatory requirements and the Postal Service's supporting justification, the Commission finds that the GEPS 8 product is appropriately classified as competitive and adds it to the competitive product list.

Product list and MCS language. The Postal Service proposes conforming revisions to MCS section 2510.3, which covers GEPS Contracts. See Request, Attachment 3. The Commission approves these changes and revises the competitive product list and MCS accordingly. The Commission also revises §2510.3.5 of the MCS to include the changes proposed in CHIR No. 1 to clarify the nature of CeP Service, modified to take into account the Postal Service's suggestions in its Response to CHIR No. 1.⁹

Cost considerations. Because the Commission finds that GEPS 8 is a competitive product, the Postal Service must also show that the Agreement covers its attributable costs, does not cause market dominant products to subsidize competitive products as a whole, and contributes to the Postal Service's institutional costs. 39 U.S.C. § 3633(a); 39 C.F.R. §§ 3015.5 and 3015.7. As long as the revenue generated by the Agreement exceeds its attributable costs, the Agreement is unlikely to reduce the contribution of competitive products as a whole or to adversely affect the ability of competitive products as a whole to contribute an appropriate share of institutional costs. In other words, if the Agreement covers its attributable costs, it is likely to comply with 39 U.S.C. § 3633(a).

⁹ The Commission declines to adopt the exact wording proposed by the Postal Service in its Response to CHIR No. 1. As the Postal Service accurately points out, FCPIS is a separate product in the MCS and CeP Service is not. See Response to CHIR No. 1 at 1-2. The parallel structure proposed by the Postal Service—equating FCPIS and CeP Service—does not make this distinction sufficiently clear. The language adopted instead by the Commission is specifically intended to clarify that CeP Service, as offered in GEPS contracts, refers to a variant of the FCPIS product (and thus can be analyzed as such). The Postal Service also raises that delivery tracking is also available as Electronic USPS Delivery Confirmation[®] International in GEPS contracts that include FCPIS instead of CeP Service. See Response to CHIR No. 1 at 1-2. Accordingly, the Commission has adapted its proposed language to include a parallel reference to that option.

The Request includes a certified statement that the Agreement complies with the requirements of 39 U.S.C. § 3633(a). Request, Attachment 5. The Postal Service also filed supporting revenue and cost data showing that the Agreement is expected to cover its costs. Based on its review of the record, the Commission finds that the rates should cover the Agreement's attributable costs. See 39 U.S.C. § 3633(a)(2). For this reason, the Commission concludes that the Agreement should not result in competitive products as a whole being subsidized by market dominant products, in accordance with 39 U.S.C. § 3633(a)(1). Similarly, the Commission finds that the Agreement is unlikely to prevent competitive products as a whole from contributing an appropriate share of institutional costs, consistent with 39 U.S.C. § 3633(a)(3). See *also* 39 C.F.R. § 3015.7(c).

The Commission will review the cost coverage of the Agreement, the GEPS 8 product, and the contribution of competitive products as a whole to the Postal Service's institutional costs in the Annual Compliance Determination to ensure that they continue to comply with 39 U.S.C. § 3633(a).

In conclusion, a preliminary review of the Agreement indicates that it is consistent with section 3633(a).

Baseline agreement. The Commission designates the Agreement as the baseline agreement for the GEPS 8 product. Following current practice, in any future request to add a new negotiated service agreement to the GEPS 8 product, the Postal Service shall identify all significant differences between the new negotiated service agreement and the baseline agreement. Significant differences include terms and conditions that impose new obligations or new requirements on any party to the negotiated service agreement. The docket referenced in the caption of the request should be Docket No. MC2017-183. Consistent with current practice, the request should include a redacted copy of Governors' Decision 11-6.

Other considerations. The Postal Service will notify the customer of the effective date of the Agreement. Request at 4. The Postal Service shall promptly notify the

Commission of that effective date. If the effective date of the Agreement is the first of the month, the Agreement will expire one year after the effective date. *Id.* Otherwise the agreement will expire on the last day of the month one year after the effective date. *Id.* at 5. If the Agreement terminates before the scheduled expiration date, the Postal Service shall promptly notify the Commission in this docket.

In conclusion, the Commission approves GEPS 8 as a new product and designates the Agreement as the baseline agreement for the GEPS 8 product. Revisions to the competitive product list and the MCS appear below the signature of this Order and are effective immediately.

V. ORDERING PARAGRAPHS

It is ordered:

1. Global Expedited Package Services 8 (MC2017-183 and CP2017-284) is added to the competitive product list as a new product. Revisions to the competitive product list and the MCS appear below the signature of this Order and are effective immediately.
2. The Commission designates the Agreement as the baseline agreement for the GEPS 8 product
3. The Postal Service shall promptly notify the Commission of the effective date of the Agreement.
4. If the Agreement terminates before the scheduled expiration date, the Postal Service shall promptly notify the Commission in this docket.

5. The Secretary shall arrange for publication in the *Federal Register* of an updated product list reflecting the change made in this Order.

By the Commission.

Stacy L. Ruble
Secretary

CHANGE IN PRODUCT LIST

The following material represents changes to the product list codified in Appendix B to 39 C.F.R. part 3020, subpart A—Competitive Product List. These changes reflect the Commission’s order in Docket Nos. MC2071-183 and CP2017-284. The Commission uses two main conventions when making changes to the product list. New text is underlined. Deleted text is struck through.

Appendix B to Subpart A of Part 3020—Competitive Product List

Negotiated Service Agreements*

Outbound International*

Global Expedited Package Services (GEPS) Contracts

GEPS 8

CHANGE IN MAIL CLASSIFICATION SCHEDULE
CHANGE IN PRODUCT LIST

The following material represents a change to the Mail Classification Schedule. The Commission uses two main conventions when making changes to the Mail Classification Schedule. New text is underlined. Deleted text is struck through.

Part B—Competitive Products
2000 Competitive Product List

2500 Negotiated Service Agreements*

2510 Outbound International

2510.3 Global Expedited Package Services (GEPS) Contracts

2510.3.2 Size and Weight Limitations

Priority Mail Express International¹

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address, and other required elements on the address side			<u>none</u>
Maximum	36 <u>79</u> inches			<u>70 pounds</u>
	79 <u>108</u> inches in combined length and girth			

Priority Mail International^{1, 2}

	Length	Height	Thickness	Weight
Minimum ²	5.5 inches	none	3.5 inch	none
	<u>For customer-provided packaging, large enough to accommodate postage, address, custom labels, and any other required elements on the address side</u>			
Maximum	42 <u>79</u> inches			70 pounds
	79108 inches in combined length and girth			

Notes

2. ~~Items must be large enough to accommodate postage, address and other required elements on the address side.~~

*First-Class Package International Service &
Commercial E-Parcel Service ~~Packages (Small Packages)~~*

Packages (Small Packages)

	Length	Height	Thickness	Weight
Minimum	Large enough to accommodate postage, address, and other required elements on the address side			none
Maximum	24 inches			4 pounds
	Length plus height plus thickness of 36 inches			

2510.3.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Delivery Tracking
 - Offered with FCPIS to certain destinations as Commercial ePacket Service or Electronic USPS Delivery Confirmation® International to certain destinations.

2510.3.6 Products Included in Group (Agreements)

Each product is followed by a list of agreements included within that product.

- GEPS 8
Baseline Reference
Docket Nos. MC2017-183 and CP2017-284
PRC Order No. 4129, September 27, 2017
Included Agreements
